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TOWN OF NEW WINDSOR

ZONING BOARD OF APPEALS REGULAR SESSION

DATE: APRIL 9, 2007

AGENDA

7:30 p.m. – Roll Call

PUBLIC HEARINGS:

1. **DEBORAH MENKENS (07-05)** Request for:

2 additional horses on property
35.1 ft. front yard setback 300-11 (A)

at 1 Sean Court in an R-1 Zone (52-1-79.1)

(NEXT MEETING APRIL 23, 2007)

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

APRIL 9, 2007

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
KIMBERLY GANN
KATHLEEN LOCEY
ERIC LUNDSTROM
PAT TORPEY

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

ABSENT: MYRA MASON
ZONING BOARD SECRETARY

MR. KANE: I'd like to call to order the April 9, 2007
meeting of the New Windsor Zoning Board of Appeals.

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PUBLIC_HEARING

DEBORAH_MENKENS_(07-05)

MR. KANE: Tonight's first public hearing is Deborah Menkens' request for two additional horses on property and 35.1 foot front yard setback in an R-1 zone.

Mr. and Mrs. Lawrence Menkens appeared before the board for this proposal.

MR. KANE: I'm going to have Eric pass around a sheet, it's just to put your name and address on, this is for the stenographer so that in case she can't make out what you say, she has a list of names and stuff to put into the record. Okay.

MRS. MENKENS: Deborah Menkens, 1 Sean Court, Rock Tavern, New Windsor.

MR. MENKENS: Lawrence Menkens, 1 Sean Court, Rock Tavern.

MRS. MENKENS: Tonight we're here to request a variance for two additional horses to live at our back yard.

MR. KANE: Why don't we do the easy one first. You're really here for two, so let's take care of the front yard setback.

MRS. MENKENS: Yes, please.

MR. KANE: Why don't you address that one first.

MR. MENKENS: We have an existing shed on a private road that's not set back far enough, it's a removable shed.

MR. KANE: Cut down any substantial vegetation?

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MR. MENKENS: No.

MR. KANE: Create water hazards or runoffs in the building of the shed?

MR. MENKENS: No.

MR. KANE: Have there been any complaints about the shed formally or informally?

MR. MENKENS: No.

MR. KANE: And approximate size of the shed?

MR. MENKENS: 12 x 24.

MR. KANE: Would you consider that a normal size for the sheds that are in your particular area of town?

MR. MENKENS: I would assume so, yes.

MR. KANE: And you understand the passing of the, if the variance is approved that the shed itself would still have to meet all the requirements in the building department?

MR. MENKENS: Yes.

MS. GANN: Mr. Chairman, on the map that we have here where would the shed be in location to the road on this map just so we know?

MR. MENKENS: Right in the back here.

MRS. MENKENS: There's the shed currently, this is the house.

MR. LUNDSTROM: It's not on there.

MRS. MENKENS: No, this is an old survey, this is a new

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survey.

MS. GANN: Do we have a copy of the new survey?

MRS. MENKENS: Mr. Babcock, do you have a copy of the new survey?

MR. MENKENS: This is where it is now.

MR. MENKENS: This is where it is now.

MS. GANN: That's where you're putting the shed?

MR. MENKENS: This is where it is now. If the board doesn't see fit, this is where we plan on moving it to but we'd like to leave it there.

MR. KANE: How long has the shed been in existence?

MR. MENKENS: Two years.

MR. KANE: Building permit applied for for the shed originally?

MR. MENKENS: No, sir.

MR. LUNDSTROM: If I may, if the shed, is there, why are you coming before this board now for a variance to make the shed legal?

MR. MENKENS: It was pointed out to us that it was too close to the road and not set back, it wasn't set back far enough from the private road.

MR. LUNDSTROM: Who pointed that out to you?

MR. MENKENS: The building inspector.

MR. LUNDSTROM: Okay.

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MR. KANE: And would it be a substantial financial hardship to move the shed to proper distance from the property line?

MR. MENKENS: It wouldn't make it financially substantial but it would be an inconvenience.

MR. LUNDSTROM: One further question. The shed itself, what type of footing is it on, is it concrete base, gravel base?

MR. MENKENS: There's a concrete slab on the bottom, I originally planned on putting up a metal shed, we had high winds and that blew down and had to replace it with the wooden shed, it's on 4 X 4 skids.

MR. LUNDSTROM: So if need be you could actually drag it off on the 4 X 4 skids?

MR. MENKENS: Yes, if need be.

MS. LOCEY: If memory serves me correctly, it's on an easement.

MR. MENKENS: Yes, an AT&T easement but that's like I said it's movable, if anyone needs to get in to service it this line is dead, it's just the easement for now, if need be, I can move that to anyplace either side.

MR. KANE: You understand with the easement though that if AT&T wanted to come in, they don't need your permission to basically go right through the shed if they had to if you want weren't around?

MRS. MENKENS: Yes.

MR. MENKENS: Yes, I understand.

MRS. MENKENS: When we put the barns in place, I spoke to AT&T, they gave me a written letter for permission

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for the barns to be placed on the easement and with the understanding that if they had to come through that we'd have to move the barns.

MR. KANE: Same thing applies to the shed.

MRS. MENKENS: Yes.

MS. LOCEY: Can't push it back because of the--

MR. MENKENS: We have a fence line here that's part of the fence, the fences are attached here and here.

MR. LUNDSTROM: If I may interrupt, I'm having difficulty hearing, I appreciate the fact that our stenographer probably cannot hear it.

MRS. MENKENS: Would you like us to put the map up?

MR. LUNDSTROM: If you would that would be helpful. Thank you.

MRS. MENKENS: This is the current shed where it's sitting right now, if you're to deny the variance, this is where we would move it to off the AT&T and within the 40 foot setback.

MR. KANE: How many feet off of the, is that Sean Court right there where it is currently, how many feet off the road is the shed currently?

MR. MENKENS: Twenty-eight feet.

MR. KANE: So it doesn't inhibit the view of traffic coming down Sean Court one way or the other?

MR. MENKENS: No, sir.

MR. KANE: Any further questions on the shed from the board?

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MR. KRIEGER: Now I'm somewhat confused, you said before it was on a concrete slab, then you said it was on skids.

MR. MENKENS: It's on a concrete slab, the shed was dropped there and it's on 4 X 4 skids.

MR. KRIEGER: On top of the concrete?

MR. MENKENS: It's not attached to the concrete in any way.

MR. KRIEGER: So if the shed were moved the concrete slab would remain?

MR. MENKENS: Yes and a basketball court would be, basketball hoop would be used.

MR. LUNDSTROM: What's the size of the concrete platform?

MR. MENKENS: Maybe six inches on either side, six inches on either side of it.

MR. KANE: Just a shade bigger than the 12 x 24 of the shed?

MR. MENKENS: Yes.

MR. LUNDSTROM: What's the shed currently being used for?

MR. MENKENS: Garden supplies, tractors.

MRS. MENKENS: Lawn mowers, pool supplies.

MR. LUNDSTROM: No livestock or anything like that in there?

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MRS. MENKENS: No.

MR. MENKENS: We store some feed in there.

MR. KANE: Any further questions from the board on the shed? Okay, I'll just remind the board that when the vote is taken they'll be taken as two separate issues so we'll make the appropriate application at that time. Okay, Deborah, horses.

MRS. MENKENS: Okay.

MR. KANE: It's going to be separate vote at the end.

MRS. MENKENS: I'm here tonight to request a variance for two additional horses to live on our back yard Hobby Horse Farm, the horses belong to myself, my son, Matthew, my son, Michael, and my husband, Larry.

MR. KANE: And the reason that you want to double the amount of horses on your property?

MRS. MENKENS: There are four of us that ride and we'd like to ride at the same time.

MS. GANN: Just for the record, what will the horses be used for?

MRS. MENKENS: For our recreational use.

MR. LUNDSTROM: Mr. Chairman, a question. The additional two horses, where are they now staying?

MRS. MENKENS: At Holly Bush in Salisbury Mills being boarded, they have been there since November.

MR. LUNDSTROM: How far away is that facility from your house?

MRS. MENKENS: Between three to five miles.

MR. KANE: And the approximate property size?

MRS. MENKENS: It's 4.159.

MR. KANE: Do you feel that this is an adequate size to maintain four horses?

MRS. MENKENS: Yes, it is because we feed them grain twice a day and we supply them their hay so they do not rely on the pastures or the paddocks for feed.

MR. KANE: So they're basically non-grazing?

MRS. MENKENS: Non-grazing.

MR. KANE: And you currently have two horses?

MRS. MENKENS: Yes, we have two horses there right now.

MS. GANN: What would be your, I don't know how to say this but maneuver management plan?

MRS. MENKENS: We have a wagon, it's a cart we put the manure on there directly from the stables and paddocks and take it to a local farmer once a week so there's no manure storage.

MS. GANN: You just pill it up?

MRS. MENKENS: In the wagon, we keep it covered every day.

MS. GANN: It stays in the one wagon every day. It must get pretty high.

MRS. MENKENS: No, it's 12 x 6.

MS. GANN: Okay.

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MR. KANE: With the two horses you're basically it looks like you're zoned in an R-1, a lot of single family homes in your area, have there been any complaints formally or informally about the current situation with regard to the horses?

MRS. MENKENS: With just the two on the farm right now, no, there haven't been any complaints.

MR. KANE: Any further questions from the board at this time?

MR. LUNDSTROM: At this time, I'd be interested in hearing what the public has to say.

MR. KRIEGER: I have a couple. You said the property was 4.19 acres, is that correct?

MR. MENKENS: Yes.

MR. KRIEGER: That includes the paddocks, house, the driveway, the concrete slab and I think you mentioned at preliminary that you intended to erect--

MRS. MENKENS: No, it's already existing.

MR. KRIEGER: That would be part of the 4.19 acres?

MRS. MENKENS: Right here we have a riding arena, right here is the riding arena, right here we have a round pen for riding.

MR. KRIEGER: How much of the 4.19 acres is taken up by the house and the driveway?

MRS. MENKENS: I know the opposite answer.

MR. KANE: You can address it that way.

MRS. MENKENS: It's about 3.9 acres that the farm is

on.

MR. KRIEGER: After?

MRS. MENKENS: Taking away the house and the driveway.

MR. KRIEGER: The 3.9 you said and the does that take away the concrete slab?

MRS. MENKENS: I didn't include the concrete slab then we can subtract the barn if we wanted to too.

MR. LUNDSTROM: One question, I know in the preliminary there was talk about a fence, what is usable area for the horses inside the fence?

MRS. MENKENS: I haven't figured that out, you're talking about the interior of the fence or interior or the electric fence?

MR. TORPEY: It gets smaller as it goes.

MRS. MENKENS: I had to keep the animals 75 feet off the property line so I had to erect an electric fence on the interior of the fence.

MR. TORPEY: So how much does that, it made it smaller.

MRS. MENKENS: Yes.

MR. LUNDSTROM: How many usable acres do the horses have excluding the property outside the electric fence, excluding the house and the driveway?

MR. KANE: You can give an approximate.

MR. MENKENS: Two acres, maybe a little bit more.

MR. KANE: Okay, at this point, I'm going to open it up to the public, please don't be repetitive. If you have

any questions, state your name and address when you stand up to speak. Are there any questions from the public on this particular hearing?

MS. EXPOSITO: I'm Sue Esposito, friend of the Menkens and as you're just you're looking at the and I understand this is about size and things but you don't understand these horses have their own personality, they're companions to the Menkens, they have been born with, they have been ladled with the burden of boarding outside their home and not being able to spend any time that they need with the, with these horses. So that's a factor. And you have to look at it as such her children have emotional attachments, we call them pets, you may think of them as a horse or pet, it is their companion, it's not just their horse or their pet, it is a part of their family. The horses are part of their family. And you have to take that into consideration. I actually told her to bring her horses home back in November, it would be cheaper to pay your fine than pay the boarding fees. What the children have gone through is unnecessary, you have to look at a bigger picture sometimes.

MR. KANE: Thank you.

MS. WATSON: I'm Chip Watson, Mid Hudson Regional Director for the New York State Horse Council. The Menkens have made efforts to house their horses in a more than adequate manner, they have been certified by the New York State Horse Health Assurance Program which is a program where a representative from the state comes down, checks over their management program which includes the care, the maintenance of the horses, the manure management, the setup of the facility, the use of the animals and they have passed and they're a certified farm horse farm. So they're complying really well with horse care maintenance. They have also been in touch with the Soil and Water Conservation Group and they have come out and done an analysis to say that

there's no runoff that's affecting any of the neighbors with this particular property. Also with the manure management program there's a substance called Solitude which is a feed through fly control substance, what it does it doesn't affect the animals but what it does is when the horse does have a manure pile or something in the field if any flies or anything land on that the larvae is made to decompose it but not allowed to become a real fly. So the fly problem is not an issue when they feed Solitude. The fly problem would be more of an issue for the neighbors who don't take care of their fly problem rather than this, so they're complying with horse care management in a very exceptional manner.

MR. KANE: Thank you.

MR. DECKER: Jack Decker, 462 Toleman Road. As with the flies, all right, last summer when they had it put in, I got a pool in my back yard and you can't really enjoy it because we have the manure smell coming over, you can't kept windows open at night, you have the horse smell coming in. Two out of three houses are up for sale. I'm wondering what it's going to do to the value of my property. I'm sure when these people bought the houses they were more than willing to stay there a longer length of time, they have been there very short time and moving out because of the horse farm. So I just want to know what it's going to do for me.

MR. KANE: Ma'am?

MS. GRAY: I'm Shelly Gray, I own two farms that are in Cornwall, one of the farms is where Debbie's horses are boarded at. I'm also the chairperson for the Equine Advisory Committee for Orange and Ulster County, also a board member of the Orange County Dressage Association. Knowing my farm is also certified for the horse assurance program as Debbie's is and it is an

incredibly stringent program, I mean, you're inspected, you have, I know for myself I think there's only 9 barns in all of New York State that are certified as a boarding operation, that's how stringent it is. She has to do stuff that I'm telling you none of the, there's plenty of the horses in Orange County and none of them do what she does to care for things properly and do the right thing and be a good neighbor. And I know where I am I have neighbors are next to my farm and I care for 72 horses, my neighbors love me, they love the beauty of the agriculture, they don't like seeing New Windsor and Cornwall lose what was beautiful about it. Our agricultural which was something you drove by and happy to live next to, somebody with horses it was like oh, I live in the country, this is beautiful. She's obviously caring for the smell, the flies and doing everything right. I would think we'd want to support this, keep these things in this area, this is what makes, what's beautiful about the Hudson Valley instead of it being little tiny postage stamp developments.

MR. KANE: The size of your property?

MS. GRAY: I have between, well, there's two farms, one is 45 acres, one is 120 where I kept my horses at home, I mean, the rule was always an acre per horse, that's what they used to say but it's different if you're following the criteria, you're supplementing the feed, that was if you're going to turn that horse out and they're going to eat on that field, that's where you went by the acre, mostly, I mean, what you have is more than adequate, more than adequate than what most people have in Orange County. It's very common as Chip knows to have horses, I mean, it's huge in Orange County, we have some of the, how many horses in Orange County, it's ridiculous in the back yards, they're not doing what she's doing, you're very pleased to have her meeting that criteria in New Windsor because that's not what's going on in the other towns, I can tell you

that, but, I mean, I think she's doing the right thing and I don't think two other horses is going to make much difference.

MR. KANE: Thank you. Anybody else?

MS. ANTONELLI: My name is Lillian Antonelli, I was born and raised in this town and I have seen it evolve and I think people need to remember that New Windsor actually was farmland at one point in time and well New Windsor was farmland at one point in time and people have seemed to have forgotten and we have seemed to have forgotten that now we have building and constantly building condos, town homes and houses in an area where we're not meant to have so many people to be on our streets. I have been at Deb Menkens' house and I would prefer to step out on a street and see horses instead of another house built on top of a small lot where there should not be another house at. I'm thankful to go over there, she's very friendly and inviting, the horses are very well cared for, I was very impressed, she's been going around and expressing and lecturing, has showed my son everything, very open to the community and public. I have gone out there and in all kinds of weather I have never smelt the manure. I understand the concerns but you need to understand the housing market is very stressful right now, if people are putting their houses on the market, they're selling to get out to make money to move on, maybe to move south, go into other directions, it's not the only reason why they're selling is because there's horses in the back yard. You cannot just blame that and use that as an excuse. And I want to make that known that there's other reasons to be selling their homes right now. And if you said it would happen less last year they put it on the market, you can't use that as an excuse, they're doing it because the time to sell and time to make money and move and but also we can no longer afford to live in this community because the market is the, the taxes are so high so for people

moving out and more people coming in the houses have sold which means people have bought the houses knowing there's horses in the back which tells you people people don't have a problem with it, they like the idea there's not going to be another house built on top of them, it's an open community and has horses there. And that means you don't have to worry about other people being around you and I'm thankful for that, I'm thankful that somebody has kept true to keeping an open community around here and instead of having me walking out of my house and I look over and I see town homes, 400, 300 town homes out there, it's disgusting, and so I happen to like going out there to visit her, it's peaceful and quiet. That's it.

MR. KANE: Thank you.

MR. DECKER: Jack Decker, 462 Toleman Road. I didn't realize that we had to bring other people to condemn this and she says people knew the horse farm was there, it was not there when they bought their houses, the horse farm is after the houses were occupied.

MR. KANE: Thank you, sir, we're not going to debate, not going to debate, okay, if you have something new to add I'll let you speak again. Ma'am?

MS. WATSON: Chip Watson. I'm the Mid Hudson Regional Director for the New York State Horse Council. The other thing you need to be aware of is that the Menkens are in an Ag District and if you have property in an Ag District, you have a right to farm. And if you have the right to farm is supposed to be explained to people before they buy their homes in in that area whether there's a farm there or not, this is an Ag District and that means that a person who buys the property in that area knows they can farm, knows that other people can farm and there will be farm odors farm, just farm activities. So the person who is not a farmer that buys in an Ag District recognizes that, accepts that

and the farmer has a right to farm.

MR. KANE: Wouldn't you say that would be the same thing as knowing when you bring horses on the property what the rule is to have two horses only? It's a very similar thing, you know what the laws are when you bring them in.

MS. WATSON: Realtors are supposed to help their buyers too so she's asking for a variance.

MR. KANE: I understand. Thank you. Sir?

MR. BONITA: Richard Bonita, 18 Broad Street, New Windsor. In defense with the smell we have been to the Menkens several times for barbecues in their driveway out in the yard, their driveway, there's no odor of horse. So if the neighbors are smelling horses and not on top of that theirs isn't the only horse farm on that street, there's no odor of horse on their driveway. I have a good friend lives across the street, I have spent time in his back yard, there's no odor of horse so that's extenuating, I think.

MR. KANE: Thank you. Ma'am?

MS. SCHIRALDI: Debbie Schiraldi, I live at 275 Beattie Road in New Windsor, Washingtonville mailing address. I have been a Hudson Valley resident in our area for 44 years and I have had my property on Beattie Road since 1982, I'm also a horse farm owner, recreational, I live in the Town of New Windsor, I have 5.4 acres, it's zoned for two horses. But what I'd like to say is that I would like to see the Town of New Windsor comply more with a more horse friendly attitude, less than a half mile down the road from me is Hamptonburg and if my house was in Hamptonburg I could have four horses. And that's my point that I think that New Windsor has lost the flavor of that country feel. I grew up in Washingtonville with horses and cows before condos and

neighborhoods and I think that we should remember that the big picture for some of us that have been here a very long time and that we should be more AG friendly. Yes, they did put the cart before the horse, I bought my property, I knew what I was zoned for but I would also like to see New Windsor maybe change the idea of having more horses on a more AG friendly venue. Thank you.

MR. KANE: Thank you. Ma'am?

MS. BONITA: Lisa Bonita, 18 Broad Street, New Windsor, New York. I have one comment, actually, one of the things the issues that I think about is if I lived on Toleman and I saw bulldozers and people cutting down trees I would raise a question and cause, bring a concern or an issue then as it was happening. I'm also a friend of Deb Menkens. I am a previous horse owner, unfortunately, I lived in Sullivan County and people across the street from us had a horse and I also live in an area where there's a donkey and a horse less than a mile away, don't have a problem that, I know that they're the grandfather clause because at one time we were an AG area and it seems like we want more tax money so we're building, building, building. We can't even get down the road, you know, and I also was involved not as far as the creation but privy to what she invested in this property and this gentleman's concerned about his value of his property, her value of her property is upwards to more than a million dollars, it certainly would not degrade on his property. I have lived in towns and even our neighbors where we have cars and trash and they diminish, you know, what we can't, it's an issue that everybody has that what's in someone else's yard but you can't control, you know, what your neighbors are doing. But if you see it happen that's when it should be done. And I don't understand why, you know, that there's this big problem with all the houses saying they want to sell when this has been in existence for quite a while, that's all.

MR. KANE: Thank you. Anybody else?

MR. RAKOWIECKI: Joe Rakowiecki, Station Road, Salisbury Mills. I'm a retired dairy farmer, I have been here 62 years, I've got some aerial photos that I could give to the board, you have probably got aerial photos from the USDA Farm Service. When you look at the aerial photos there there's a lot of open land there, there's more of a concentration of open land and there's a few houses around, it would be good to keep open. I have been to the Menkens' farm also, we had upwards of 150 head of cattle when I milked cows. I know what it is to take care of the horses, those horses are living in the Waldorf Astoria type building. The Menkens know how to take care of horses. I know how to take care of cattle. It's nice, it's clean and if they use the larvicide on the manure and I can't smell manure there, I mean, it's ridiculous, I mean, I've smelled more manure than everybody put together in this building and it's nil, it's nothing and I have showed cattle and you want to talk about manure smelling and stuff, you go over to the cattle shows and the people come at the shows, you get people coming all over the place and there's not a problem. So I can't see what the problem is here with a couple extra horses cause I bet you 99 percent of the people would rather have horses than houses.

MR. KANE: Thank you. Anybody else? Last chance. Okay, we'll close the public portion of the meeting and give me a second to get some paperwork.

MR. BABCOCK: Can I just give you some information and I think Mr. Lundstrom was looking for prior to this. One of the issues that goes along with having horses says that you must maintain them 75 feet from the property line. When you measure in 75 feet from the property line where they have to maintain them it leaves an area of about 270 feet, based on this scale

of this drawing by 230 feet, that calculates out to be 62,100 square feet. So where the horses must be maintained is about, it's less than an acre and a half, it's not the four acres. So having a horse, I know that's what you were trying to get at where the horses must be maintained, so the record is clear, it's not four acres, it's an acre and less than a half where the horses must be maintained.

MR. LUNDSTROM: Thank you.

MR. KANE: Also for the record let it be known that 23 addressed envelopes containing a notice were mailed on the 23rd of March, 2007. On those we received two back and we'll read them into the record. My name is Brett Smith, I live at 4 Sean Court. I will be unable to attend the public hearing on April 9 for appeal number 07-05, Deborah Menkens' request for two additional horses on the property. I'm opposed to this request. I have attended the previous variance meeting in August, 2006 for the request for more horses. From August, 2006 to December, 2006 they did have six horses on their property. The smell was unbearable. I ask you not to accept their request for two additional horses.

Next is from time Tim Spindler and family at 2 Sean Court. I'd like to express concerns about the proposition of two additional horses to the Menkens' property. In August, 2006 the Menkens brought six horses to their property with the horses flies and a strong odor followed. Throughout the rest of the summer and into the fall we routinely had flies in and around our house. Prior to the horses, we haven't had a problem. Some days were worse than others, however, they're a nuisance we could do without. Big horse flies soon followed and I can tell from experience when they bite it hurts. So with two small children I don't want to take any chances. In addition to the flies, the horses created a stale smell in the air. At times while sitting on our back deck, the odor was so strong

we had to go in the house. The wind determined the strength of the smell but it lingered on a daily basis. Again, something we could do without. The horses were only around for one month of the summer. I can't imagine what kind of smell or flies they'd create through an entire summer. Since that time, the Menkens had to remove four horses per the Town of New Windsor court for violating the town codes. With the experience of last summer, it's hard to imagine that it would be any different this summer. The flies and smell were an inconvenience that hindered the outdoor lifestyle of my family. With the past in mind it's hard to agree with the proposal for additional horses on the property.

So that's the mailings. We'll take it back to the board for questions.

MR. LUNDSTROM: Mr. Chairman, one question. We've heard quite a few people speak tonight. Can I see by a show of hands how many people spoke in favor of the two horses? I can't, 2, 4, 6, 7, 8 people, how many of those people live within 500 feet of the Menkens' property, the ones that spoke in favor of it? May the record show that I see no hands up of the people that spoke in favor of the Menkens having two additional horses live within 500 feet of the property. Mr. Chairman, let's ask the opposite side of that question. Those people who spoke against the two additional horses, can I see by a show of hands those people that spoke against the two horses that live within 500 feet of the Menkens' property? Can I see by a show of hands? Sir, do you live within 500 feet? May the record show there was one person spoke against it and that one person was within 500 feet.

MR. TORPEY: Excuse me, Mike, if that property's there but now it's all just squeezed into a smaller property that's all they get to roam around those two horses, they can't go beyond that electrical fence?

MR. KANE: That's correct.

MR. TORPEY: Then where is the two acres even for two?

MR. KANE: It wasn't two, I think Mike narrowed it down to one and a half.

MR. TORPEY: If you need two acres per horse.

MR. KANE: Basically New York State suggests one acre per horse.

MR. TORPEY: Why are they going 75 feet off the property line for a fence now, they don't even have two acres?

MR. KANE: Well, that's really the issue, not whether anybody likes horses or not whether the property is big enough to handle the horses in that particular zone.

MR. TORPEY: They've got an electric fence and they have to stay in there?

MRS. MENKENS: I would have to go for a variance to allow my horses up to the fence, wooden fence like that's existing I ran up to too much opposition in the neighborhood so we decided to put a 75 foot fence line, electric fence line.

MR. TORPEY: So the horses can't even go to the property line now.

MRS. MENKENS: Seventy-five feet within the property line now.

MR. TORPEY: That's a small area.

MRS. MENKENS: Yes.

MR. TORPEY: That's a shame, I love horses but--

MR. KANE: That's part of the public process, you get a chance to speak when it's open. At some point, it closes, that's why I give you more than enough time. I go back a second and third time, after that, it ends, you can stay here all night debating or bringing up points.

MRS. MENKENS: Eventually, I'll go for another variance to allow the horses on the existing wood fence line but right now, the horses are confined 75 feet off the property line that's electric.

MR. TORPEY: So you lose half your property.

MRS. MENKENS: Pretty much, yeah, the horses were too close to the neighbors.

MR. KANE: Can you speak on when you did have the additional horses what type of opposition you ran into?

MRS. MENKENS: All right, I have a whole thing that I can read off if you'd like.

MR. KANE: Now's the time, ma'am.

MRS. MENKENS: All right the Menkens Hobby Horse Farm is certified by the New York State Health Assurance Program issued by New York State Agricultural and Markets Department, exceeding best practices in horse and farm care. When certification was issued in November, 2006 there were six horses on the property. When Dr. Denny came out to visit me and do my certification she was astonished by my farm, how clean it was, how well maintained it was and how happy the horses were and that's when I had six horses. At the same time, I had Orange County Soil and Water come out and did a site visit. Mike Mallett did the visit, you have the paperwork from his observations now. Currently, I'm in the Agricultural Environment

Management which is also done by Orange County Soil and Water, I'm Tier 3. In that, in the report he has listed my best practices, things that I can improve on and any, the information that I'm about to address. I have been working with the Agricultural Department at Cornell Cooperative Extension in Orange County. I have been in training programs designed to meet educational needs of horse farmers. My back yard also has been nationally certified by the Federation of Wildlife as a back yard wild habitat. New York State minimum lot size for horses if pastures are to be used for sustenance then one acre of pasture for horses is usually appropriate. If the area's to be used for a turnout area which my farm is then five or more head may be carried on one acre of land. Most horse operations are closed systems where they are conducted on smaller acreage, feed is brought in and manure is exported off the farm. Horses are exercised in various arenas, indoor and outdoor and rotated in small rectangular fences areas (paddocks). I have paddock areas, I have an arena where the horses are exercised and I have a round pen where the horses are trained. Flies. The report from Orange County Soil and Water as far as the flies go this was a bad summer throughout New York State but this is the best answer that I can give you. There are so many different species of flies and many people cannot tell them apart even if they had to. Maybe an entomologist. All flies look for decaying organic matter to breed in. Hence the reasons why your neighbors believe you are the cause of the extremely high amount of flies. Organic manure. The winter of 2005 into 2006 was an extremely mild winter. this allowed many flies and larva to survive when they usually were destroyed due to the extreme cold. I believe this to be the problem number one. The second problem is that flies love to breed. Some can reproduce more than 10 times a year if conditions are right. Well, conditions were right. Spring was pretty wet and the summer was mildly warn therefore bounties of flies were noticed. There are some things that

favor the breeding of flies. Animal manure is. Flies also like areas that are wet, again, this was a pretty wet year. Storm water and culvert pipe. Report from Orange County Soil and Water. The culvert pipe that drains the water onto your property cannot be stopped. About the only thing you can do is persuade the water to go the direction you want it to on your property. What this means is that if you have the elevation change drop from start to finish you can create a swale that will allow the water to stay inside the channel and not affect any existing management practices or structures that you have in place. There are guidelines to follow when building this type of permanent drainage practice. You and your neighbor will still have to deal with the water on each of your properties. Building the ponds like you have on site will slow the movement of water down. If you appreciate the environment that these ponds create, wetland vegetation/aquatic critters, I would leave the ponds as are, or create more of them. Keep in mind that this will not solve the water issues. If you are interested in getting rid of the water as quickly as possible, you can again put it into a properly sized channel or swale and keep it moving on and off your property. This may be a good idea if neighbors continue to complain about water contamination. Manure. Pithing the soil on the outside of the fence is up to you. This may call for a cut in the toe of the soil away from the fence. You do not want to build the soil up next to the fence because this may cause more ponding. I would leave the soil the way it is but continue thinking about that buffer in between your fence and the existing land. I have also sent to you a report from our initial visit. AEM which is Agricultural Environmental Management. There is a lot of information in the report regarding farming in New York State. I hope that it will be beneficial to you with your farm decisions. The existing culvert pipe is draining storm water from 2 Sean Court. The swale still exists and runs into a manmade pond. The pond

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currently has green frogs and gold fish. Would you like me to show you photographs?

MR. KANE: No.

MRS. MENKENS: Property line.

MR. KANE: Do you want to see photos?

MR. LUNDSTROM: No.

MRS. MENKENS: Property line. Information gathered from a FOIL. Steel-front deck is 180 feet from property line, 255 feet from electric fence and 345 feet from barn. Menkens' back deck 70 feet from fence, 145 feet from electric fence and 235 feet from barn. Smith, 78 feet from wooden fence, electric fence and barn is 235 feet from property line. Spindler, 75 feet from electric fence, 56 feet from wooden fence and barn is 240 feet from property line. Property value. A letter from Miss Watson, licensed New York State realtor. The value of the Menkens' property located on 1 Sean Court, New Windsor has not been decreased due to the installation of a horse facility. The neighboring properties have not been affected by the presence of horses in the neighborhood. The adjacent property also houses horses. The property is located in an Ag District which is covered by the Right to Farm laws and is protected from frivolous lawsuits and complaints. The farm is a certified under NYSHHAP, New York State Horse Assurance Program, which evaluates the care and maintenance of horses and the property. Property value is based on the current sales of other similar houses in the area. A comparable property evaluation is calculated on the condition, location, style of the house based on existing sales of similar homes. A properly maintained horse farm does not bring the value of the neighborhood down. I spoke to the Town Assessor two weeks ago and he came out to reassess my property and the assessment will go up because I have raised the

property value putting the farm there. Horse odor. The report from the AEM, waste management practices on the Menkens' Hobby Horse Farm seem to be up to speed. If a situation came up on the farm where a dead animal had to be disposed of, a rendering company would pick up the animal within 48 hours after the death. Manure is removed from the farm weekly, and will be talked about in greater detail later in the report. Any type of waste oil, grease and antifreeze is immediately taken to a recycling facility. All plastic containers are triple rinsed and recycled. Old lead acid batteries are exchanged when the new batteries are purchased. There are no products on the farm causing problems such as veterinary/medical waste, fertilizer bags, plastic bale wrap/silage bags or paints/solvents. The farm does not contain a dump or a burning barrel that could cause controversy with the nearby neighbors. On the Menken's Hobby Horse Farm, no manure from horses 12 months of age and under is ever applied to hydrologically sensitive areas. Actually, all manure on the farm is removed and composted off site. If foaling stalls are needed they will be stripped, disinfected and rested at least two weeks before reused. The Menkens' Hobby Horse Farm is participating in the NYS Horse Health Assurance Program. this program is a voluntary certification program designed to promote and to teach a proactive approach to equine health, care and welfare through the use of certain Management Practices and to recognize exceptionally managed equine operations. Manure is not spread on the land that will be used for pasturing or production of hay within six months after spreading. This will greatly reduce the chances of infection from protozoa and bacteria. The barn on site is well ventilated and cleaned daily. Feed and waterers are also cleaned regularly, again reducing the chances of infection and eliminating all possible environments. I recommend that all manure-holding areas on site be covered to keep odors down and storm water out. Manure Management for Horses AEM Report. Manure management on the

Menkens' Hobby Horse Farm is stored in a location and regularly hauled off the farm. I suggest that the defecation area of your pastures continue to be cleaned of manure and all fence lines contain a vegetative buffer to catch all nutrients leaching that is occurring. Outdoor Paddock and Arena Management AEM Report. In the case of the Menkens' Hobby Horse Farm, permeable soils do not cause an issue for runoff and increased infiltration. As of right now, vegetation is spotty on the paddocks due to the fact that it was recently fall seeded. A lot of the area is covered with a layer of mulch for protection. Seeding will be completed into these areas during this coming spring. Manure is regularly cleaned up and removed to storage from the paddocks. This will reduce the chances of polluting surface or ground water. All clean roof water is going to be collected and stored in rain barrels. This will reduce the amount of sheet flow occurring in the paddocks. I suggest that a vegetated buffer be maintained outside the paddock fence area to help contain and absorb nutrients that may be in the runoff. Along with keeping vegetation maintained on the outside of the paddocks, vegetation must be maintained on the inside of the fence. The main idea is to keep the paddocks 100 percent vegetated from proper rotational grazing. Keeping vegetation maintained on all of the paddocks is a dream for all horse owners. Agriculture and the Community, AEM Report. Farming in all areas of the world has an impact on the economic, social, recreational and environmental benefits to the community, town and watershed it is located in. Orange County and the Town of New Windsor are undertaking efforts to preserve farmland and want to document the multiple public benefits of retaining a viable agricultural industry within the community. The Menkens' Hobby Horse Farm is located nearby agricultural businesses, nonagricultural businesses, residential housing and public buildings. Neighbor relations seem to be a concern in the small rural community. Farm operators pay close attention to

the appearance of the farm and all the equipment as well as the management practices being implemented. The farm does not contain a conservation easement nor does it have a conservation nutrient management plan that is being followed at this time. There is an impact on the regional and local community's economy because of this farming operation. Local businesses are utilized on a day-to-day basis. I would feel safe to say that the farm is part of a desired viewshed that promotes tourism and adds to the quality of life in the community. Currently, we are working with Lucy Joyce from the Agriculture Department at Cornell Cooperative Extension of Orange County, she requested that if anyone has questions about my farm to give her a call, she's out of town on vacation and sorry she could not be here. The neighborhood's health and safety have not been affected by our horse farm. The character of the neighborhood is being changed by new homes sprouting up in a once farming community. But at the same time this cannot be said for the Menkens.

MR. LUNDSTROM: Can I interrupt you for a second? Are these now your statements, are these the statements--

MRS. MENKENS: These are my statements. We're being watched, people have trespassed, photos taken of our private back yard space, singled out by reporting only our violations of the town when other violations exist on Sean Court, called town hall daily complaining about us. Not to mention a neighbor trying to run me and my son over with their SUV. Special attention has been given to a neighbor any new complaints please call so and so dated 8/7/06 with a business card attached which is in my building department folder. The neighbors have frightened my sons and endangered their health and safety by their watching, taking pictures, trespassing, reckless driving and daily deliveries on Sean Court. My sons will no longer play outside without either Larry or myself being with them.

MR. KANE: Okay thank you. Anything else you want the board to consider?

MRS. MENKENS: I really would like my horses home.

MR. KRIEGER: In an R-1 zone if they had 20 acres they would be permitted to have an unlimited number of horses, is that correct?

MR. BABCOCK: Yeah, there's no number at 20 acres.

MR. KANE: So the issue isn't whether that to me at least whether you run a good farm or not, obviously you do with the two horses that are there, it's doubling the amount of horses on a small property space that to me is the issue.

MR. TORPEY: They're not meeting two horses right now.

MR. KANE: The general guideline of per horse from New York State true but again, I think that's the issue, it's not an issue whether you do a good job of doing it cause obviously you do and I think a lot of statements here and that you have read have indicated that people are against you having horses at all which is not the case, the case is that you do have two but you want to double what's there already on a small parcel. So I just want to state that because a lot is coming that it is not against having horses or that your property is not nice.

MR. MENKENS: If feed is the concern, don't depend on the grazing, we bring it in as met by the standards, the paddocks are cleaned every day, every other day of manure.

MR. KANE: I'm sure they are, I don't have any question on that.

MRS. MENKENS: My pastures are not used for substance,

my pastures are not used for feeding the horses. If my pastures were used for feeding the horses then the rule is one acre per horse. If the area to be used for a turnout then five or more head may be carried on one acre, that's the New York State law, I bring in food, I bring in the feed and they're exercised daily so I'm meeting the needs of the horses.

MS. LOCEY: Where are they exercised?

MRS. MENKENS: In the arena and the round pen and when the weather is permitting we'll start trail riding.

MR. LUNDSTROM: Mr. Chairman, question. Let me ask first question to the building inspector, R-1 zone the current in this situation is two horses?

MR. BABCOCK: That's correct.

MR. LUNDSTROM: How long has that zoning been in effect, two years, five years, ten years?

MR. BABCOCK: The two horses I think was 1986, the 75 feet was a change that came about because of complaints of the horses being close to the property lines, you know, somebody else's property line.

MR. KANE: Within the town, not just with Mr. and Mrs. Menkens.

MR. BABCOCK: Yeah and that was a long time ago, I don't remember when that changed but that was a long time ago.

MR. LUNDSTROM: If I may now ask a directed question to the Menkens. How long ago had you purchased the property?

MRS. MENKENS: Four years ago.

MR. LUNDSTROM: So then the zoning was in place at the time you bought the property?

MRS. MENKENS: Yes. Now, if you let me take the electric fence down then I'll have plenty of space for the horses. I had to ask.

MR. TORPEY: Well, how far does the fence have to be from the property line right now without the electric fence?

MR. BABCOCK: That's where it has to be.

MRS. MENKENS: It has to be 75 feet off the property line, if I took down the electric fence, the horses would be free to roam within the fence line.

MR. TORPEY: But how far is the fence right now off the property line?

MR. BABCOCK: There's two fences.

MR. TORPEY: Talking about the wooden fence.

MR. BABCOCK: The wooden fence varies, 30, 32 feet.

MRS. MENKENS: To 78 feet but--

MR. BABCOCK: But it's probably it's a good bit more area for the horses to be in but they would need a variance which they're not applying for at the time they would need a variance to do that.

MR. LUNDSTROM: One other question to the Menkens. How many horses do you own, are you talking about currently own four horses?

MRS. MENKENS: Four horses, yes.

MR. LUNDSTROM: Cause I know a while back when you were

before there were six horses, you've sold the other two?

MRS. MENKENS: I didn't sell them, I had to give them away.

MS. LOCEY: What about the proposal that you had prior to this particular application about some sort of a riding school or something for handicapped children?

MRS. MENKENS: It was a letter of inquiry that was taken out of my folder and blown out of proportion, there's no school, there's no therapeutic school.

MS. LOCEY: So you didn't change your mind, someone misinterpreted that?

MRS. MENKENS: Someone, yes.

MR. MENKENS: It was inquired about.

MRS. MENKENS: Left as is, I never thought it would come up to bite me again.

MS. LOCEY: You inquired about it?

MR. MENKENS: It was inquired about, they said no and that was the end of it.

MRS. MENKENS: And I'm only, I can only handle one issue at a time, so I figured I'd like to bring my horses home and then eventually address the fence line so the horses would have the property to roam. It's not like they're constricted in a little box and cooped up, believe me, they run and, excuse my language, fart a lot in the fields.

MS. LOCEY: I actually drove passed and looked at it, it did look kind of cramped to me, a lot of fencing in a small area.

MR. MENKENS: Which part did you see?

MS. LOCEY: I saw the--

MR. BABCOCK: There's several fences, it's very deceiving to see from the road, you really have to look down on it to understand it better. Looking from the road there's several fences and it's very, if you don't really sit there with a survey, it's very hard to determine what fence is doing what, the electric fence you probably you may or may not have seen, you know, it's the wooden fence then there's another wooden fence that goes around so there's several fences there so it's difficult to understand where the horses would go.

MR. KANE: Any further questions from the board? If there's none, I will accept a motion.

MR. LUNDSTROM: Just one further question, if I may. Would you just give a brief synopsis for the purpose of zoning in the town why does the town adopt zoning?

MR. KRIEGER: The concept of zoning dates back to a Supreme Court case Euclid (phonetic), long time ago, so the purpose of zoning in New Windsor is basically the same as it is whenever it's been enacted and that is to control the use of property so that the use by one person does not impinge on the rights and privileges of his or her neighbors. When we exist in a society where there's basically unlimited land this was not a concern because people were so far apart. As they've gotten closer together, the use that one person puts their land to may have an adverse impact on neighboring land owners who have the same right to enjoy their property as everyone else. And so where zoning has been upheld as a legal restriction going back to the Euclid case and all the cases thereafter it has been to put reasonable restrictions on the use of real property so as to not to deprive other owners in the area of the

right to use their property as well.

MR. LUNDSTROM: Thank you.

MS. LOCEY: Could I ask the Menkens another question?

MR. KANE: Absolutely.

MS. LOCEY: What, briefly, what's being done differently now that was not done in August or September?

MR. MENKENS: The manure was being raked up in the fields.

MRS. MENKENS: There was no grass because the project was just coming to completion.

MS. LOCEY: How does the grass help besides look nice?

MR. MENKENS: Cuts down on the erosion for water issues.

MRS. MENKENS: Holds the ground together so we don't have mud.

MS. LOCEY: What's the Solitude policy?

MRS. MENKENS: That's the manure management and how you get rid of it.

MS. LOCEY: And you're getting rid of it by taking it off site?

MRS. MENKENS: Yes, we have this big cart that we put the manure on every day and every week we cart it off so there's no manure stored any longer, manure is no longer stored on the property, manure is not longer spread on the paddocks. I have sacrifice paddocks so the graces can grow, I have four paddocks so I have

rotation going on with paddocks, I also have my arena, my round pen where we work the horses.

MS. LOCEY: And what about larvicide?

MRS. MENKENS: Larvicide is like a vitamin supplement that's given in the morning, what happens is that the horse digests it and when the horse poohs whatever fly larvae they consumed is killed in it, killed in the manure so they can never, never gets to the larvae state and grow up to be an adult, if the fly lands on the manure and eats it they'll also die.

MS. LOCEY: Was that being done in September?

MRS. MENKENS: Yes.

MS. LOCEY: And it's still being done?

MRS. MENKENS: Yes.

MS. LOCEY: Yet there were a lot of complaints.

MRS. MENKENS: It was a very mild winter and the flies were not killed off like they normally are, it was a very wet season, we had a lot of construction going on so we were topsy turvy with everything and we had flies and we did the larvicide, I do the juice where we capture the flies, fly traps, I have fly spray and aerosol in the barn area. I also spray the horses for the flies, it was a bad year for flies and we had another mild winter, it's going to be another difficult summer for flies.

MS. LOCEY: Were you taking the manure off site last September?

MRS. MENKENS: No.

MR. MENKENS: We had taken, we had stored some and we

found somebody who was coming once a week to get it and when he stopped coming we had the trailer and we started taking it off site.

MR. LUNDSTROM: If I may ask one more question of counsel. Is there a reasonability consideration that should be brought into effect with the granting of any variances?

MR. KRIEGER: The word reasonability does not appear in the either the state or town statutes. However, I'm going to review in a second the criteria at least state's criteria for doing it, whether that can be fairly translated into reasonableness is something that each member is entitled to determine for his or herself but you must use the criteria that you must follow. One, whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of area variance. Two, whether the benefits sought by this applicant can be achieved by some method feasible for the applicant to pursue other than an area variance. Three, whether the requested area variance is substantial. Four, whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district. And five, whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of an area variance. In passing, I might mention it's unlike a use variance in that regard which is not being applied for but in the case of a use variance finding of self-created hardship will defeat a use variance application. It's a relevant consideration here but not an automatic determinate.

MR. KANE: Also when you present your motion, I would like you to, we have two to do, one for the shed and we'll take a motion for that and then followed by a

motion for the horses. Okay, so there's two things here that we've got to cover.

MS. LOCEY: I will offer a motion on the application of Deborah Menkens regarding 35.1 foot front yard setback for an accessory building that it be granted at number 1 Sean Court in an R-1 zone subject to applicant's acknowledgement that it is over an easement and they're aware of any problems that might come from that and they're willing to accept that.

MR. TORPEY: I'll second that.

ROLL CALL

MS. GANN	NO
MR. LUNDSTROM	NO
MS. LOCEY	AYE
MR. TORPEY	AYE
MR. KAYE	AYE

MR. KANE: Shed passes 3 to 2. Next motion is?

MR. LUNDSTROM: According to Roberts Rules, the motion has to be in the affirmative, therefore, I will make a motion that the application by Deborah Menkens project number 07-05 request for two additional horses on the property at 1 Sean Court in an R-1 zone, section, block and lot, 52-1-79.1 be approved as presented.

MS. LOCEY: I'll second that motion.

ROLL CALL

MS. GANN	NO
MR. LUNDSTROM	NO
MS. LOCEY	AYE
MR. TORPEY	NO
MR. KANE	NO

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MR. KANE: Motion's denied four to one. Motion to adjourn.

MR. LUNDSTROM: So moved.

MS. GANN: Second it.

ROLL CALL

MS. GANN	AYE
MR. LUNDSTROM	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE

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MR. KANE

AYE

Respectfully Submitted By:

Frances Roth
Stenographer